

2003-13

>>> "Cynthia Dennis" <dennisc@cooley.edu> 08/28/03 12:52PM >>>
Dear Michigan Supreme Court Clerk:

Please find attached Sixty Plus, Inc.'s comments to the proposed amendment of MCR 5.408.

Respectfully Submitted,

Cynthia M. Dennis

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TO: Michigan Supreme Court Clerk

FROM: Sixty Plus, Inc.

RE: ADM File No. 2003-13
Comments to Proposed Amendment of MCR 5.408

DATE: August 28, 2003

Sixty Plus, Inc. objects to the proposed change in Rule 5.408 of the Michigan Court Rules for reasons provided below. If the proposed amendment is adopted, other protections are necessary as also explained below.

Sixty Plus, Inc. (Sixty Plus), Elderlaw Clinic, provides free legal advice and representation to persons 60 years of age and over who reside in Ingham, Eaton, and Clinton counties. Sixty Plus is an in-house legal clinic of the Thomas M. Cooley Law School. Direct legal services are provided by the student interns pursuant to MCR 8.120(C) and under the supervision of six faculty members who are attorneys licensed to practice in Michigan.

Each term Sixty-Plus student interns are trained to conduct reviews of existing guardianships

for the Probate Courts in Eaton and Clinton counties. In preparation for the guardianship reviews, student interns have learned that the guardianship review process is critical for the incapacitated individual's continued protection. As reviewers, student interns have understood the important role they serve to enable the Court to make a finding on the appropriateness of the current guardianship. From January 2001 through August 19, 2003, Sixty Plus student interns have conducted forty-one (41) guardianship reviews in Clinton County and one hundred twenty (120) guardianship reviews in Eaton County. Sixty Plus does not charge the courts for this service.

In addition to providing direct legal representation and conducting guardianship reviews, students and staff regularly speak to senior citizens and agency providers about legal issues affecting the elderly. Furthermore, faculty members direct special projects related to the elderly such as a Pro Bono Delivery Project that trains private attorneys to represent low-income elderly clients and Guardianship Review Training for the local bar.

The following are Sixty Plus, Inc.'s comments regarding the proposed amendment of Rule 5.408 of the Michigan Court Rules.

COMMENTS:

The motivation for the proposed amendment apparently is cost savings. While Sixty Plus acknowledges the increasing costs of court operations and the need for innovation to reduce these costs, Sixty Plus objects to the adoption of the proposed amendment of Rule 5.408 of the Michigan Court Rules (MCR 5.408). Cost savings should not come at the expense of vulnerable incapacitated individuals.

Under the current rule, a properly conducted review ensures a ward's protection. A reviewer gathers evidence to help a judge make a finding on the appropriateness of the guardianship. This

evidence is gathered through the reviewer's observations and interviews. For example, Sixty Plus student interns who review guardianships investigate the ward's physical and mental capacity, the ward's living condition, the care giver's treatment of the ward, the guardian's treatment of the ward, and the existence of any significant changes in circumstances since the granting of the guardianship that could affect its continuance. This investigation is essential for the ward's protection.

An effective way to protect the rights of legally incapacitated individuals is to maintain uniform rules for guardianship reviews to be followed and enforced in every county. Varying local plans may lead to inconsistent application of the law and may not contain appropriate safeguards for the ward's continued protection. Furthermore, guardianship reviews should not be automated or check listed. Each guardianship review should be individually investigated consistent with the spirit, intent, and letter of the law. The proposed amendment to MCR 5.408 should be rejected.

However, if the Court determines the proposed amendment of MCR 5.408 should be adopted in its present form or with modifications, Sixty Plus makes the following recommendations with respect to local review plans.

RECOMMENDATIONS:

1. The State Court Administrative Office (SCAO) shall establish guidelines for a court submitting a local review plan for approval. The guidelines shall ensure the protection of rights of legally incapacitated individuals.
2. A proposed local review plan submitted by a court shall include:
 - a. a statement by the probate court identifying the difficulty or problem with the current guardianship review process in the county;
 - b. a specific statement of local circumstances including the number of reviews

performed each fiscal year;

c. a statement how the proposed local review plan will meet goals and objectives of the court with respect to guardianship reviews;

d. a statement how the proposed local review plan will ensure the continued protection of legally incapacitated individuals; and

e. a method of evaluation of the local review plan.

3. Local review plans should not proceed indefinitely without a review of the plan's effectiveness and periodic reporting to SCAO.

In conclusion, the proposed amendment of Rule 5.408 of the Michigan Court Rules should be rejected. If it is determined that the proposal should be adopted or changed before adoption, Sixty Plus, Inc. urges consideration of the above stated recommendations.

Respectfully Submitted,

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